

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 576

BY SENATORS MAYNARD, GRADY, SYPOLT, MARTIN, AND

PHILLIPS

[Introduced February 03, 2022; referred
to the Committee on the Judiciary]

1 A BILL to amend §21A-6-3 of the Code of West Virginia, 1931, as amended, relating to
2 unemployment insurance generally; and authorizing the receipt of unemployment benefits
3 by an otherwise eligible person who has left employment due to his or her employer
4 denying his or her request for a medical or religious exemption regarding a COVID-19
5 vaccination requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner, an individual is disqualified for
2 benefits:

3 (1) For the week in which he or she left his or her most recent work voluntarily without
4 good cause involving fault on the part of the employer and until the individual returns to covered
5 employment and has been employed in covered employment at least 30 working days.

6 For the purpose of this subdivision, an individual has not left his or her most recent work
7 voluntarily without good cause involving fault on the part of the employer if the individual leaves
8 his or her most recent work with an employer and if he or she in fact, within a 14-day calendar
9 period, does return to employment with the last preceding employer with whom he or she was
10 previously employed within the past year prior to his or her return to work, and which last
11 preceding employer, after having previously employed the individual for 30 working days or more,
12 laid off the individual because of lack of work, which layoff occasioned the payment of benefits
13 under this chapter or could have occasioned the payment of benefits under this chapter had the
14 individual applied for benefits. It is the intent of this paragraph to cause no disqualification for
15 benefits for an individual who complies with the foregoing set of requirements and conditions.
16 Further, for the purpose of this subdivision, an individual has not left his or her most recent work
17 voluntarily without good cause involving fault on the part of the employer, if the individual was
18 compelled to leave his or her work for his or her own health-related reasons and notifies the

19 employer prior to leaving the job or within two business days after leaving the job or as soon as
20 practicable and presents written certification from a licensed physician within 30 days of leaving
21 the job that his or her work aggravated, worsened, or will worsen the individual's health problem.

22 For the purpose of this subdivision, an individual shall not be deemed to have left his or
23 her most recent work voluntarily, without good cause involving fault on the part of the employer,
24 if the individual leaves such employment as a result of being denied a religious or medical
25 exemption to the COVID-19 vaccination by his or her employer.

26 (2) For the week in which he or she was discharged from his or her most recent work for
27 misconduct and the six weeks immediately following that week; or for the week in which he or she
28 was discharged from his or her last 30-day employing unit for misconduct and the six weeks
29 immediately following that week. The disqualification carries a reduction in the maximum benefit
30 amount equal to six times the individual's weekly benefit. However, if the claimant returns to work
31 in covered employment for 30 days during his or her benefit year, whether or not the days are
32 consecutive, the maximum benefit amount is increased by the amount of the decrease imposed
33 under the disqualification; except that:

34 If he or she were discharged from his or her most recent work for one of the following
35 reasons, or if he or she were discharged from his or her last 30 days employing unit for one of the
36 following reasons: Gross misconduct consisting of willful destruction of his or her employer's
37 property; assault upon the person of his or her employer or any employee of his or her employer;
38 if the assault is committed at the individual's place of employment or in the course of employment;
39 reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work
40 under the influence of any controlled substance, as defined in chapter 60A of this code without a
41 valid prescription, or being under the influence of any controlled substance, as defined in said
42 chapter without a valid prescription, while at work; adulterating or otherwise manipulating a
43 sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee;
44 refusal to submit to random testing for alcohol or illegal controlled substances for employees in

45 safety-sensitive positions as defined in §21-1D-2 of this code; violation of an employer's drug-free
46 workplace program; violation of an employer's alcohol-free workplace program; arson, theft,
47 larceny, fraud, or embezzlement in connection with his or her work; or any other gross misconduct,
48 he or she is disqualified for benefits until he or she has thereafter worked for at least 30 days in
49 covered employment: *Provided*, That for the purpose of this subdivision, the words "any other
50 gross misconduct" includes, but is not limited to, any act or acts of misconduct where the individual
51 has received prior written warning that termination of employment may result from the act or acts.

52 (3) For the week in which he or she failed without good cause to apply for available,
53 suitable work, accept suitable work when offered, or return to his or her customary self-
54 employment when directed to do so by the commissioner, and for the four weeks which
55 immediately follow for such additional period as any offer of suitable work shall continue open for
56 his or her acceptance. The disqualification carries a reduction in the maximum benefit amount
57 equal to four times the individual's weekly benefit amount.

58 (4) For any week or portion thereof in which he or she did not work as a result of:

59 (a) A strike or other bona fide labor dispute which caused him or her to leave or lose his
60 or her employment.

61 (b) A lockout is not a strike or a bona fide labor dispute and no individual may be denied
62 benefits by reason of a lockout. However, the operation of a facility by nonstriking employees of
63 the company, contractors, or other personnel is not a reason to grant employees of the company
64 on strike unemployment compensation benefit payments. If the operation of a facility is with
65 workers hired to permanently replace the employees on strike, the employees would be eligible
66 for benefits.

67 (c) For the purpose of this subsection, an individual shall be determined to leave or lose
68 his or her employment by reason of a lockout where the individual employee has established that:

69 (i) The individual presented himself or herself physically for work at the workplace on the first day
70 of such lockout or on the first day he or she is able to present himself at the workplace or herself;

71 and (ii) the employer denied the individual the opportunity to perform work.

72 (d) For purposes of this subsection, an individual is determined to be permanently
73 replaced where the individual employee establishes that: (i) He or she is currently employed by
74 an employer who is the subject of a strike or other bona fide labor dispute; and (ii) the position of
75 the employee has been occupied by another employee who has been notified they are
76 permanently replacing the employee who previously occupied the position. Employees or
77 contractors who are hired to perform striking employees' work on a temporary basis, such as the
78 duration of a strike or other bona fide labor dispute, or a shorter period of time, may not be
79 determined to have permanently replaced a striking employee.

80 (5) For a week with respect to which he or she is receiving or has received:

81 (a) Wages in lieu of notice;

82 (b) Compensation for temporary total disability under the workers' compensation law of
83 any state or under a similar law of the United States; or

84 (c) Unemployment compensation benefits under the laws of the United States or any other
85 state.

86 (6) For the week in which an individual has voluntarily quit employment to marry or to
87 perform any marital, parental, or family duty, or to attend to his or her personal business or affairs
88 and until the individual returns to covered employment and has been employed in covered
89 employment at least 30 working days: *Provided*, That an individual who has voluntarily quit
90 employment to accompany a spouse serving in active military service who has been reassigned
91 from one military assignment to another is not disqualified for benefits pursuant to this subdivision:
92 *Provided, however*, That the account of the employer of an individual who leaves the employment
93 to accompany a spouse reassigned from one military assignment to another may not be charged.

94 (7) Benefits may not be paid to any individual on the basis of any services, substantially
95 all of which consist of participating in sports or athletic events or training or preparing to so
96 participate, for any week which commences during the period between two successive sport

97 seasons (or similar periods) if the individual performed the services in the first of the seasons (or
98 similar periods) and there is a reasonable assurance that the individual will perform the services
99 in the later of the seasons (or similar periods).

100 (8) (a) Benefits may not be paid on the basis of services performed by an alien unless the
101 alien is an individual who was lawfully admitted for permanent residence at the time the services
102 were performed, was lawfully present for purposes of performing the services or was permanently
103 residing in the United States under color of law at the time the services were performed (including
104 an alien who is lawfully present in the United States as a result of the application of the provisions
105 of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act): *Provided, That*
106 any modifications to the provisions of Section 3304(a)(14) of the federal Unemployment Tax Act
107 as provided by Public Law 94-566 which specify other conditions or other effective date than
108 stated in this subdivision for the denial of benefits based on services performed by aliens and
109 which modifications are required to be implemented under state law as a condition for full tax
110 credit against the tax imposed by the federal Unemployment Tax Act are applicable under the
111 provisions of this section.

112 (b) Any data or information required of individuals applying for benefits to determine
113 whether benefits are not payable to them because of their alien status shall be uniformly required
114 from all applicants for benefits.

115 (c) In the case of an individual whose application for benefits would otherwise be
116 approved, no determination that benefits to the individual are not payable because of his or her
117 alien status may be made except upon a preponderance of the evidence.

118 (9) For each week in which an individual is unemployed because, having voluntarily left
119 employment to attend a school, college, university, or other educational institution, he or she is
120 attending that school, college, university, or other educational institution, or is awaiting entrance
121 thereto or is awaiting the starting of a new term or session thereof, and until the individual returns
122 to covered employment.

(10) For each week in which he or she is unemployed because of his or her request, or that of his or her duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(11) In the case of an individual who accepts an early retirement incentive package, unless he or she: (i) Establishes a well-grounded fear of imminent layoff supported by definitive objective facts involving fault on the part of the employer; and (ii) establishes that he or she would suffer a substantial loss by not accepting the early retirement incentive package.

(12) For each week with respect to which he or she is receiving or has received benefits under Title II of the Social Security Act or similar payments under any Act of Congress, or remuneration in the form of an annuity, pension, or other retirement pay from a base period employer or chargeable employer or from any trust or fund contributed to by a base period employer or chargeable employer or any combination of the above, the weekly benefit amount payable to the individual for that week shall be reduced (but not below zero) by the prorated weekly amount of those benefits, payments, or remuneration: *Provided*, That if the amount of benefits is not a multiple of \$1, it shall be computed to the next lowest multiple of \$1: *Provided*, *however*, That there is no disqualification if in the individual's base period there are no wages which were paid by the base period employer or chargeable employer paying the remuneration, or by a fund into which the employer has paid during the base period: *Provided further*, That notwithstanding any other provision of this subdivision to the contrary, the weekly benefit amount payable to the individual for that week may not be reduced by any retirement benefits he or she is receiving or has received under Title II of the Social Security Act or similar payments under any Act of Congress. A claimant may be required to certify as to whether or not he or she is receiving or has been receiving remuneration in the form of an annuity, pension, or other retirement pay from a base period employer or chargeable employer or from a trust fund contributed to by a base period employer or chargeable employer.

(13) For each week in which and for 52 weeks thereafter, beginning with the date of the

149 decision, if the commissioner finds the individual who within 24 calendar months immediately
150 preceding the decision, has made a false statement or representation knowing it to be false or
151 knowingly fails to disclose a material fact, to obtain or increase any benefit or payment under this
152 article: *Provided*, That disqualification under this subdivision does not preclude prosecution under
153 §21A-10-7 of this code.

NOTE: The purpose of this bill is authorize the receipt of unemployment benefits by an otherwise eligible person who has left employment due to his or her employer denying his or her request for a medical or religious exemption regarding a COVID-19 vaccination requirement.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.